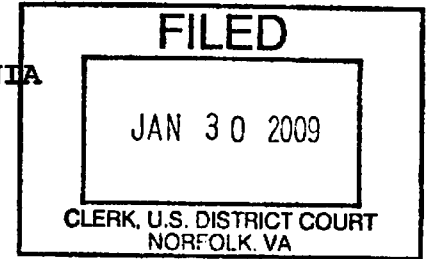


**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**



DEVINCHE J. ALBRITTON, #317524,

Petitioner,

v.

ACTION NO. 2:08cv86

GENE M. JOHNSON, Director of the  
Virginia Department of Corrections,

Respondent.

**FINAL ORDER**

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's conviction on January 26, 2005, in the Circuit Court of the City of Virginia Beach, Virginia, of one (1) count of rape and one (1) count of abduction. Petitioner was sentenced to serve fifteen (15) years in prison for the rape charge and three (3) years in prison for the abduction charge, to be served consecutively.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the Magistrate Judge (Magistrate Judge's Report) was filed on December 15, 2008, denying Petitioner's motion for an evidentiary

hearing and recommending dismissal of the petition.<sup>1</sup> By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the magistrate judge. On January 13, 2009, the Court received Petitioner's Objections to the United States Magistrate Judge's Report and Recommendations.<sup>2</sup> The Court received no response from Respondent.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Magistrate Judge's report,<sup>3</sup> and having made de novo findings with respect to the portions objected to, does hereby ADOPT AND APPROVE the findings and recommendations set forth in the report of the United States Magistrate Judge filed on December 15, 2008, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED and that judgment

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<sup>1</sup> The Magistrate Judge's Report recommended dismissal of the petition due to procedural default.

<sup>2</sup>On January 2, 2009, the Court received a motion by Petitioner for an extension of time to file his objections. The Court granted the motion on January 27, 2009.

<sup>3</sup> Petitioner makes four objections. Regarding the first objection, that the Magistrate Judge did not state the procedural history correctly, Petitioner's arguments, even if true, are not material. Second, Petitioner objects to the Magistrate Judge declining to hold an evidentiary hearing. Petitioner's objection is without merit. Third, Petitioner argues that his claims are not procedurally defaulted for a number of reasons; these arguments are also without merit. Fourth, and finally, Petitioner objects to the state court's analysis of the merits of Petitioner's state habeas claims. Because Petitioner's claims are procedurally defaulted, the Report and Recommendation did not address the merits of Petitioner's claims, and the Court sees no reason to do so here.

be entered in favor of Respondent.

Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.

  
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**Jerome B. Friedman**  
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

*JAN. 30* , 2009